5 Idaho 572; *Atkinson* v. *Riley,* 23 Ky. L. Rep. 731; *Whiley* v. *King,* 92 Cal. 431; *State* v. *Steiner* (Wash.), 87 Pac. 66. The Michigan court did not, in their opinion, deny the writ on this ground, but in contradition to the above general rule. The writ of mandamus was granted on a similar set of facts in *Dixon* v. *Field,* 10 Ark. 243.

PROSTITUTION—CONSTRUCTION OF WHITE SLAVE ACT.—The White Slave Act (Act June 25, 1910, c. 395), prohibits the transportation of women in interstate commerce "for the purpose of prostitution or debauchery or any other immoral purposes." The accused persuaded a woman to go from one state to another for the purpose of engaging in illicit intercourse, cohabitation and concubinage with accused. The indictment followed the language of the statute, and to this indictment the accused demurred. *Held,* that illicit cohabitation and concubinage are immoral acts analogous to prostitution, and come well within the letter of the statute, and that the commercial feature need not be present. *United States* v. *Flaspoller* (1913), 205 Fed. 1006.

This case is in accord with, *Hoke* v. *U. S.,* 227 U. S. 308, 33 Sup. Ct. 281, in which case the constitutionality of the act was sustained; and also with the case of *U. S.* v. *Bitty,* 208 U. S. 393, 28 Sup. Ct. 396, 52 U. S. (L. ed.) 543, which case arose under the Act of Feb. 20, 1907, c. 1134, prohibiting importation of any alien woman or girl for purposes defined by practically the identical language used in the White Slave Act. That the commercial feature need not be present to sustain a conviction under the act was also held in the recent *Diggs and Caminetti* cases. But Judge POLLOCK of the United States District Court for Kansas, in a recent case, instructed a defendant to change his plea from guilty to not guilty, intimating that he would instruct the jury to acquit if it did not appear that the girl was taken in another state to commercialize her immorality. From the cases cited above, it is evident that Judge POLLOCK's view, which has attracted a good deal of attention, was erroneous.

SALES—GOODS TO BE MANUFACTURED—REMEDY OF SELLER—POWER TO COMPLETE CONTRACT.—Plaintiff agreed to sell and defendant to buy certain bag holders to be manufactured by plaintiff and delivered to defendant at specified future dates. Before performance due, defendant notified plaintiff he would be unable to use the rest. Plaintiff sues on "open account" including therein 39,307 bags he did not manufacture. *Held,* he cannot sue upon an open account either for the purchase price of goods or for contract price less cost of manufacture. Before an action of this kind will lie, the seller must have put himself in a position where he could deliver and have actually delivered the goods or have stored and retained them for vendee. *American Mfg. Co.* v. *Champion Mfg. Co.* (Ga. App. 1913), 79 S. E. 485.

The ultimate decision here on the facts is correct, inasmuch as plaintiff did not manufacture the holders. But could the plaintiff proceed and manufacture against the express and unequivocal renunciation of the defendant? The court in coming to the conclusion above set forth said "The plaintiff could have declined to agree to the rescission, proceed with the manufacture

of the bag holders, and if at the time they were to have been delivered, the defendant refused to accept and pay for them the plaintiff then could recover under provision of the Code." This is not in accord with weight of authority. It is well settled that a vendor upon a breach of contract before performance due, may treat it as a present breach and bring action immediately. *Hochster* v. *De La Tour,* 2 El. & Bl. 678; *Frost* v. *Knight,* L. R. 7 Ex. 111; *Johnstone* v. *Milling,* 16 Q. B. Div. 460. In the United States the Supreme Court adopted the same rule in *Roehm* v. *Horst,* 178 U. S. 1. See also *Kadish* v. *Young,* 108 Ill. 170, 48 Am. Rep. 548; *Crabtree* v. *Messersmith,* 19 Iowa 182. MECHEM, SALES, § 1089: Contra,—*Daniels* v. *Newton,* 114 Mass. 530, (but see *Collins* v. *Delaporte,* 115 Mass. 159); *Riley* v. *Hale,* 158 Mass. 240; ANSON, CONTRACTS, *285 and note. See also *Barker & Stewart Lumber Co.* v. *Ed. Hines Lumber Co.,* 137 Fed. 300, 308. The vendor may elect to keep the contract open, and await the time the contract is to be performed and then hold buyer responsible. *Kadish* v. *Young* (supra), and authorities cited therein; *Stokes* v. *Mackay,* 147 N. Y. 223. See also, *Ault* v. *Dustin,* 100 Tenn. 366; *Johnstone* v. *Milling,* L. R. 16 Q. B. Div. 460. The same rule applies to sale of goods to be manufactured, *Cort* v. *Ambergate Railway Co.,* 17 Q. B. 127; *Butler* v. *Butler,* 77 N. Y. 472; *Collins* v. *Delaporte,* 115 Mass. 159. The contract is not rescinded, but broken and while the other party has the right to deem it in force, for purpose of recovery of damages, he has not the right to unnecessarily enhance the damages by proceeding, after the countermand, to finish the undertaking. MECHEM, SALES, § 1092; *Clark* v. *Marsiglia,* 1 Denio (N. Y.) 317; approved and followed in *Hosmer* v. *Wilson,* 7 Mich. 294; *Derby* v. *Johnson,* 21 Vt. 21. The same rule also laid down in *Danforth* v. *Walker,* 37 Vt. 239; *Dillon* v. *Anderson,* 43 N. Y. 231; *Unexcelled Fireworks Co.* v. *Polites,* 130 Pa. St. 536; see *Barker & Stewart L. Co.* v. *Edw. Hines L. Co.* (1905), 137 Fed. 300, 309. Such absolute refusal is to be considered in the same light, as respects the plaintiff's remedy, as an absolute physical prevention by defendants. ANSON, CONTRACTS, *285; *Derby* v. *Johnson,* 21 Vt. 21; *Haines* v. *Tucker,* 50 N. H. 311; *Smith* v. *Lewis,* 24 Conn. 624; *Clement* v. *Messerole,* 107 Mass. 362; *Collins* v. *Delaporte,* supra; *Clark* v. *Marsiglia,* supra; *Cort* v. *Ambergate Ry. Co.,* supra.

SALES—REMEDY OF SELLER—NOTICE OF INTENTION TO RESELL.—A vendee refused to take and pay for goods bought by him. One of the remedies given to a vendor by the Code is "He may sell the property, acting for this purpose as agent for the vendee, and recover the difference between the contract price and price of resale." *Held,* that before the vendee will be liable for such difference it must appear that he was notified of vendor's intention to sell at vendee's risk. *Felty* v. *Southern Flour and Grain Co.* (Ga. 1913), 78 S. E. 1074.

The cases on this point are in hopeless conflict. It is held in Illinois and elsewhere, that no such notice is necessary. MECHEM, SALES, § 1633. *Ulman* v. *Kent,* 60 Ill. 271; *Maulding* v. *Steele,* 105 Ill. 644; *Wrigley* v. *Cornelius,* 162 Ill. 92; *Clore* v. *Robinson,* 100 Ky. 402; *Kellog* v. *Frolich,* 139 Mich. 612;